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92-90

FCC MAIL BRANCH

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MAY 27 1992

Federal Communications Commission
Office of the Secretary

Office of Secretary
Federal Communications Commission
Washington, D.C. 20554

RE: In the Matter of The Telephone Consumer Protection Act of 1991

Dear Sir/Madam:

Enclosed for filing are the original and ten copies of the Comments of The Washington State Attorney General in the above-referenced matter.

Thank you for your attention.

Very truly yours,

JEFFREY D. GOLTZ
Senior Assistant Attorney General

JDG:rz
Enclosures

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MAY 27 1992

Federal Communications Commission
Office of the Secretary

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

RECEIVED

MAY 26 1992

FCC MAIL BRANCH

In the Matter of)

The Telephone Consumer Protection)
Act of 1991)

CC Docket No. 92-90

COMMENTS OF WASHINGTON STATE ATTORNEY GENERAL

In adopting rules under the Telephone Consumer Protection Act of 1991, the Commission should strive to adopt rules as stringent as the various state laws and rules in effect. This is to insure that the expectations of privacy which consumers have demanded and received from their respective states are maintained for calls made within the jurisdiction of the Commission.

The State of Washington has a statute limiting the use of automatic dialing and announcing devices (ADADs). RCW 80.36.400 states:

(1) As used in this section:

(a) An automatic dialing and announcing device is a device which automatically dials telephone numbers and plays a recorded message once a connection is made.

(b) Commercial solicitation means the unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods, or services.

(2) No person may use an automatic dialing and announcing device for purposes of commercial solicitation. This section applies to all commercial solicitation intended to be received by telephone customers within the state.

(3) A violation of this section is a violation of chapter 19.86 RCW [Washington's Consumer Protection Act]. It shall be presumed that damages to the recipient of commercial solicitations made using an automatic dialing and announcing device are five hundred dollars.

(4) Nothing in this section shall be construed to prevent the Washington utilities and transportation commission from adopting additional rules regulating automatic dialing and announcing devices.

The Washington Utilities and Transportation Commission (WUTC) has adopted such rules in the Washington Administrative Code. A copy of WAC 480-120-088 is attached.

The Commission should consider several provisions in the Washington rule.

First, WAC 480-120-088(3)(a) requires, in addition to an identification of the person for whom the call is being made and a telephone number to which a return call may be placed (as does the proposed FCC rule), a statement of the nature and length of the call.

Second, WAC 480-120-088(5) prohibits the use of any dialing of unlisted telephone numbers.

Third, WAC 480-120-088(5) also prohibits the use of such dialing before 8:30 a.m. or after 9:00 p.m.

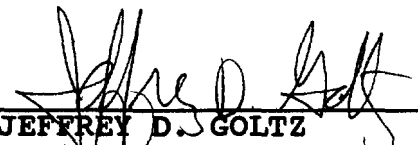
Finally, WAC 480-120-088(5) also requires notification to the local telecommunications company and periodic reporting to the WUTC about the use of ADADs. Given the varied topics upon which the Commission has requested comments from interested persons, such ongoing data likely could assist the Commission

as well as the public in proposing revisions to Commission rules in the future.

There are other provisions in the Washington rule as well which the Commission may wish to consider.

DATED this 22nd day of May, 1992.

KENNETH O. EIKENBERRY
Attorney General



JEFFREY D. GOLTZ
Assistant Attorney General

the call within the first thirty seconds. If at anytime during the conversation you say you do not want to be called again or want to have your name and number removed from the calling list, the company or organization may not have a solicitor call you for at least one year and may not sell or give your name and number to another company or organization.

(c) The attorney general's office is given the authority to enforce this law. In addition, individuals may sue the solicitor for a minimum of one hundred dollars per violation. If the suit is successful, the individual will be able to recover money spent on court and attorney's fees.

To file a complaint, or request more information on the law, please write to the Fair Practices Office listed below, or between 12:00 noon and 5:00 p.m., weekdays, call the Attorney General's Office, Fair Practices Division, at its toll-free number: 1-800-551-4636. If you are filing a complaint, please include as much information as possible about the name and address of the company or charity, the time you received the calls, and the nature of the calls.

Attorney General's Office
1300 Dexter Horton Building
Seattle, Washington 98104

[Statutory Authority: RCW 80.01.040, 86-23-035 (Order R-265, Cause No. U-86-106), § 480-120-087, filed 11/17/86.]

WAC 480-120-088 Automatic dialing-announcing devices. An automatic dialing-announcing device (ADAD) may not be operated while connected to the telephone network, except under the following conditions:

(1) An ADAD may be used pursuant to a prior agreement from the called party that he or she desires to receive such telephone communication; or

(2) An ADAD may be used if the recorded message is preceded by an announcement made by a human operator who:

(a) States the nature and length in minutes of the recorded message; and

(b) Identifies the caller and the individual, business, group, or organization for whom the call is being made and a telephone number to which a return call can be placed; and

(c) Asks the called party whether he or she is willing to listen to the recorded message; and

(d) Disconnects from the called party's line if the called party is unwilling to listen to the recorded message; or

(3) Except for purposes of commercial solicitation, an ADAD may be used if the recorded message:

(a) Identifies the individual, business, group, or organization for whom the call is being made, the nature and length of the call, and a telephone number to which a return call may be placed; and

(b) Automatically disconnects the telephone connection within two seconds after the called party hangs up the receiver.

(4) An emergency ADAD may be connected to the telephone network only under the following conditions:

(a) The ADAD contains sensors that will react only to a steady tone of at least four seconds duration, broadcasts only on frequencies allocated by the FCC for emergency services, and is designed to prevent accidental triggering of emergency calls.

(b) The ADAD provides some audible tone or message that alerts the user that the device has been activated and will automatically dial the preprogrammed emergency number unless manually deactivated within thirty to forty-five seconds.

(c) The ADAD provides for disconnection within two seconds when the called party performs a predetermined function.

(d) The ADAD satisfies applicable state safety requirements.

(e) The user registers the instrument with and receives written approval for its use from the emergency services to which an automatic call would be directed, and secures from such services an approved telephone number or numbers to be programmed into the instrument: *Provided*, That the user shall not program the instrument to dial police or 911 emergency response numbers.

(5) As to any ADAD, provision must be made to preclude the dialing of unlisted telephone numbers and the dialing of designated public service emergency telephone numbers as listed in published telephone directories and to preclude the ADAD from dialing any telephone number before 8:30 a.m. or after 9:00 p.m., except where the ADAD is designed to deliver a message in response to an emergency situation, and the user obtains approval from any public emergency service agency or telephone subscriber prior to using the ADAD to dial such agency or subscriber.

Before any ADAD, other than an ADAD designed to deliver a message in response to an emergency situation, may be operated while connected to the telephone network, the potential user of such device shall notify the telecommunications company in writing of the intended use of the ADAD equipment. The written notice shall contain a statement of the calendar days and clock hours during which the ADAD(s) will be used and include an estimate of the expected traffic volume in terms of message attempts per hour and average length of completed message. In addition, each utility shall maintain records of such ADAD equipment connected to their facilities and provide the commission with quarterly reports detailing the individual business, group, or organization operating such ADAD, their address and associated telephone number.

The telecommunications company shall review the statement of intended use of ADAD equipment to determine whether there is a reasonable probability that use of the equipment will cause overload of the utility's facilities. If the utility finds that a reasonable probability exists that the ADAD operation will overload its network, the utility may refuse to provide connections for the ADAD(s) or provide them subject to conditions necessary to prevent an overload. If, after service has been established, it is determined that the volume of calling

originated by the ADAD is degrading the service furnished to others, the utility may suspend or terminate the service after five days' notice to the subscriber. If use of the ADAD creates overloading in a telecommunications company switching office, the utility may suspend or terminate the service with no prior notice.

The telephone subscriber who uses ADAD equipment shall notify the utility in writing within thirty days of any changes in the ADAD operation which result in either an increase or decrease in traffic volume.

Except for an ADAD designed to deliver a message in response to an emergency situation, no ADAD shall be connected to the network unless the subscriber furnishes the utility with a written certification that the equipment can effectively preclude calls to unlisted telephone numbers, to designated public service emergency numbers, or to any number or series of telephone numbers on a list of telephone subscribers who may be in the future designated by the utility, by regulation or by statute, as subscribers who are not to receive ADAD calls.

The telecommunications company shall suspend or terminate the telephone service of any subscriber who uses an ADAD in violation of the provisions of this rule provided that the subscriber is given eight business days' notice or with no prior notice if use of the ADAD creates overloading in a telecommunications company switching office.

[Statutory Authority: RCW 80.01.040, 86-23-035 (Order R-265, Cause No. U-86-106), § 480-120-088, filed 11/17/86. Statutory Authority: RCW 80.01.040 and 1985 c 450, 85-23-001 (Order R-242, Cause No. U-85-56), § 480-120-088, filed 11/7/85. Statutory Authority: RCW 80.01.040, 84-09-054 (Order R-212, Cause Nos. U-83-51 and U-83-56), § 480-120-088, filed 4/17/84. Statutory Authority: RCW 80.36.140, 79-03-031 (Order R-123, Cause No. U-79-01), § 480-120-088, filed 2/28/79.]

WAC 480-120-089 Information delivery services.

(1) "Information delivery services" means telephone recorded messages, interactive programs, or other information services that are provided for a charge to a caller through an exclusive telephone number prefix.

(2) "Information providers" means the persons or corporations that provide the information, prerecorded message, or interactive program for the information delivery service.

(3) "Interactive program" means a program that allows a caller, once connected to the information provider's announcement machine, to access additional information by using the caller's telephone.

(4) Telecommunications companies offering information delivery services shall provide to each residential telephone subscriber the opportunity to block access to all information delivery services offered through the local exchange company. The first such request shall be fulfilled at no charge to the subscriber. Subsequent requests for blocking (e.g., after a subscriber has unblocked such access) must be afforded, but a charge may be assessed. This charge for blocking shall cover its fully allocated costs, and shall be tariffed.

(5) To insure that all costs of complying with chapter 123, Laws of 1988, shall be borne by the information

providers, the telecommunications company offering information delivery services shall:

(a) File with the commission an annual report showing all expenses related to compliance with the section, and related to provision of information delivery services. Expenses include, but are not limited to, the expense of conducting a cost study to determine the appropriate charge for blocking, provision of customer notification of the availability of blocking, and the expense of developing accounting procedures to comply with this section.

(b) The annual report shall fully allocate all investment associated with complying with this section, and associated with provision of information delivery service, and;

(c) Report all information delivery service and blocking service revenues as separate revenue items.

(6) The local exchange company shall inform residential telephone subscribers of the availability of the blocking service through a single-topic bill insert and through publication of a notice in a conspicuous location in the consumer information pages of the local white pages telephone directory. The notice and bill insert shall clearly inform residential telephone subscribers of their rights under the law and shall, at a minimum, include the following information:

(a) Under Washington law you have the right to request free blocking of access to information delivery services on your residential telephone line. Information delivery services are services provided for a fee by telephone recorded messages, or other information services which you get by using a special telephone number. These special telephone numbers are often called "976" or "960" numbers. Blocking is the way that you can prevent these types of calls from being made on your residential telephone line.

(b) You are entitled to free blocking on your residential telephone line the first time you request it. If you later decide to "unblock," you can do so, but you may be charged for any blocking after that.

(c) To request blocking of access to information delivery services on your residential telephone line, call your local telephone company at the following number: _____, and request blocking.

(d) The Washington utilities and transportation commission is given the authority to enforce this law. If you want more information, please write to the commission at the address listed below, or call the commission during working hours at its toll-free number: 1-800-562-6150.

Washington Utilities and Transportation
Commission
Consumer Affairs Section
1300 South Evergreen Park Drive S.W.
Olympia, WA 98504

[Statutory Authority: RCW 80.01.040, 88-18-011 (Order R-288, Docket No. U-88-1798-R), § 480-120-089, filed 8/26/88, effective 10/1/88.]

WAC 480-120-091 Farmer lines. Each utility furnishing switching service for farmer lines shall file with